

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 27 of 1998

Date of decision: 13-10-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHANTABEN DALSUKHBHAI PATEL

Versus

MAIZ PRODUCTS

Appearance:

MR KV SHELAT for Petitioners

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/10/98

ORAL JUDGEMENT

This second appeal is directed against the judgment and decree passed by the 5th Extra Assistant Judge, Ahmedabad (Rural) at Mirzapur, in Regular Civil Appeal No.78 of 1990 decided on 31st December, 1997 under which the suit of the plaintiff- respondent has been decreed and the defendant- appellants have been ordered to vacate the suit premises on or before 30th April, 1998. The defendants were further directed to pay mesne profit at the rate of Rs.50/- per month for 11 months i.e Rs.550/- and thereafter to continue to pay at the same rate till handing over possession of the premises to the plaintiff.

2. The learned counsel for the defendants appellants does not make any submission on merits of the appeal, but he prays for grant of two years' time to vacate the suit premises. This prayer has been made on the ground that the defendant - appellant No.1 is widow of Dalsukhbhai Patel and she is not in a position to vacate the premises immediately as she has financial constraints and it is very difficult to find alternate suitable premises for residence. The first appellate court has granted to the defendants - appellants four months' time to vacate the premises, but instead of vacating the premises, the defendants -appellants have chosen to file this appeal. The purpose of filing this appeal is to get further time to vacate the suit premises. Though may not be true in all cases, ordinarily it is difficult in these days to get alternate suitable accommodation within a short period, and more so for the persons who have litigated with their landlord in relation to the premises in which they are residing. Such category of persons are being blacklisted and normally it is difficult for them to get alternate suitable accommodation on rent. Secondly, if what the learned counsel for the appellants says is correct, financial constraints maybe another ground which makes it difficult for the appellants to get their own house or rented premises for their residence. Keeping in view this broad aspect of the fact that the counsel for the defendants appellants has not pressed this appeal on merits, I consider it to be proper and in the interest of justice to grant time upto 31st December, 1999 to the appellants - defendants to vacate the suit premises. However, this grant of time is subject to the condition that, first, the appellants -defendants shall furnish a undertaking before this court that they will hand over vacant and peaceful possession of the suit premises to the plaintiff- respondent on or before 31st December, 1999; and secondly, they shall not induct into or permit

any other person to enter the suit premises or part with possession of the suit premises to any other person in any manner whatsoever, and they will keep the premises in tact and will not make any additions or material alteration, and further that they shall pay all the arrears of rent due and the mesne profit at the rate of Rs.50/- per month within a period of two months from today and shall continue to pay Rs.50/- per month towards mesne profit for use and occupation of the premises till 31st December, 1999 or till the date they vacate the suit premises, whichever is earlier. Breach of any of the aforesaid conditions will render the appellants defendants liable to automatically vacate the premises without reference to the court, and in that case the decree of the court shall become executable forthwith. Undertaking as aforesaid shall be furnished by the defendant- appellant within a period of two months from today. Liberty is granted to the plaintiff-respondent to move this court for modification or revocation of this order if they so desire and the circumstances so warrant.

3. In the result the second appeal is dismissed, subject to grant of time for vacating the premises as aforesaid.

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